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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,521	08/17/2001	Hans Herweijer	Mirus.023.01	4294

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MIRUS CORPORATION  
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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED: 03/20/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 09/932,521	<b>Applicant(s)</b> HERWEIJER ET AL.	
	<b>Examiner</b> WU-CHENG Winston SHEN	<b>Art Unit</b> 1632	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 19 May 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Valarie Bertoglio, Ph.D./  
Primary Examiner  
Art Unit 1632

Continuation of 10. Other (including any explanation in support of the above items):

MPEP 1205 (1) (v) states, "Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number.... For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section must be set forth with reference to the specification by page and line number..."

The summary at page 5 of the appeal brief fails to sufficiently delineate specific references to the specification to support each independent claim and each dependent claim that is independently argued. Applicant is required to delineate specific references to the specification to support each step of independent claim 1, step (a) providing the expression cassette comprising the nucleic acid sequence operably linked to a promoter, step (b) forming a non-viral, linearized plasmid DNA vector comprising the expression cassette, and step (c) delivering the non-viral, linearized plasmid DNA vector to a hepatocyte in a mammal. Applicant also needs to delineate specific reference to the specification to support the specific limitations recited in independent claims 2-15 and 17 that are independently argued.

Page 8 of appeal brief "6. Grounds of rejection to be reviewed on appeal": Applicant documented to appeal on 112 second rejection and 112 first written description rejection. However, Applicant did not document to appeal on 112 first, lack of enablement rejection. In this regard, Applicant is directed to the last paragraph on page 3 of the Non-Final office action dated 10/06/2005, which states the following: To the extent that the claimed compositions and/or methods are not described in the instant disclosure, the claims are also rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, since a disclosure cannot teach one to make or use something that has not been described.